IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. [redacted] 6

DANIEL J. SENTILLES,

Petitioner,

v.

INTER-CARIBBEAN SHIPPING CORPORATION,

Respondent.

PETITIONER'S BRIEF ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON KELNER and JOHN K. LEWIS
Attorneys for Petitioner
25 West Flagler Street
Miami, Florida

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TABLE OF CITATIONS

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Petitioner, Daniel J. Sentilles, respectfully prays that this Court reverse a judgment of the United States Court of Appeals for the Fifth Circuit which reversed a judgment of the United States District Court for the Southern District of Florida. The District Court judgment had been entered in favor of the Petitioner pursuant to a jury verdict resulting from his seaman's suit for personal injuries.

OPINIONS OF THE LOWER COURTS

No opinion was rendered by the trial court. The majority and dissenting opinions of the Fifth Circuit Court

of Appeals are reported at 256 F.2d 156, and appear in the record before this Court (R. 105-109).

JURISDICTION OF THIS COURT

This Court has jurisdiction to review the judgment complained of by writ of certiorari, 28 U.S.C., Sections 1254 (1) and 2101 (c). Certiorari was granted by this Court on March 2, 1959. *359 U.S. 923, 79 S.Ct. 604, 3 L. Ed.2d 627.* This brief on behalf of the Petitioner is being filed on or before August 25, 1959, pursuant to Supreme Court Rule 41 (1).

STATUTE INVOLVED

THE JONES ACT

41 Stat. 1007

46 U.S.C.A. Section 688—Recovery for injury to or death of seaman

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regu-

lating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

QUESTIONS PRESENTED FOR REVIEW

1. In establishing a prima facie causal relationship between an accident and subsequent acute tuberculosis, Is the plaintiff-seaman required to adduce medical testimony which excludes every other possible cause of his condition?

2. Can a federal appellate court, after a jury verdict and judgment for plaintiff-seaman, ignore medical testimony which clearly presented a jury question and reverse the judgment for alleged failure of medical proof?

3. Can a federal appellate court, after a jury verdict and judgment for plaintiff-seaman in a personal injuries action, enter judgment for the defendant-employer where (a) at pre-trial conference counsel for the defendant admitted that the plaintiff had sustained *some* injury, and (b) undisputed testimony established at least *some* injury.

STATEMENT OF THE CASE

HISTORY

The Petitioner initiated his suit for personal injuries in a state court. The Respondent had the cause removed to the United States District Court for the Southern District of Florida. The amended complaint asked for money damages arising from personal injuries sustained as a

result of the Respondent's negligence and or failure to provide a seaworthy vessel. The Petitioner also asked for maintenance and cure (R.1-4). The Respondent denied all allegations of negligence, unseaworthiness, proximate causation, and damages (R. 4-6).

The cause proceeded to trial and resulted in a jury verdict and judgment in Petitioner's favor (R. 8-9). The Respondent took an appeal from the judgment to the United States Court of Appeals for the Fifth Circuit (R. 105). The sole question involved on appeal was the sufficiency of evidence to establish that the disabling illness of the Petitioner resulted from his shipboard accident (R. 106). The Court of Appeals reversed the lower court judgment and entered judgment for the Respondent, holding that the Petitioner had failed to prove that "the aggravation of his tubercular condition was probably caused by the incident on shipboard" (R. 108). Judge Rives dissented from the majority opinion (R. 109).

The Court of Appeals denied rehearing, with Judge Rives dissenting once more, and a Petition for Certiorari filed with this Court was granted (R. 110).

FACTS

The Petitioner was an engineer on the Respondent's ship S.S.Montego when the accident occurred (R. 105). In April, 1953, the ship encountered very rough weather on its voyage from Santa Marta, Colombia to Miami (R. 10, 91). The vessel tossed and pitched through 25-30 mile-an-hour winds and twenty foot waves (R. 11, 13, 18). The Petitioner was crossing the deck when the ship "took a very heavy sea and fell away", leaving him suspended in

the air (R. 93). He fell to the deck on his left side, hitting his head, shoulder, ribs, hip, and leg (R. 11, 94). A wave washed him twenty-four feet along the deck, into the chains around the edge of the ship (R. 12, 93). His skin was scraped and scratched by the deck, his shirt and trousers were torn, and he inhaled some sea water (R. 94, 95).

The Petitioner complained of pain in his head and side after the fall (R. 13). A day or two thereafter he developed a cough and pain in his chest (R. 16-17). He felt as though he had the flu, and was treated aboard ship for a "heavy cold" (R. 16, 95). Although he had felt well and had no cough before the accident, he was described by the ship's captain as a "pretty sick man" with persistent chest complaints when the ship reached Miami three or four days afterward (R. 14-17, 95). About ten days later the Petitioner saw Dr. Fischbach (R. 96-97). A potential diagnosis of tuberculosis was made at that time (R. 25). The Petitioner returned home to New Orleans and was hospitalized and treated for "very acute" tuberculosis (R. 64-65).

Dr. Charbonnet had been the Petitioner's treating physician since 1935 (R. 23). He examined the Petitioner in the months of May, July, August, September, and October of 1952, and found *no* evidence of tuberculosis (R. 28). An examination as late as February 1953, *two months before the accident*, revealed no chest difficulties of any kind (R. 27).

The Petitioner's chest was X-rayed in June, 1950. The X-ray taken at that time showed a small, scarred, *inactive* area in the left mid lung field (R. 53-54). An X-ray taken in May, 1952 gave no evidence of tuberculosis. (R.

27-28). A third X-ray, taken about a month after the Petitioner fell, showed a cavity in the left lower lung field, with a fluid level and marked peripheral reaction (R. 51).

Medical testimony established that inactive tuberculosis is often present in a person, and that a blow to the chest can reduce the body's ability to fight off the tubercular bacilli (R. 39, 70-71). It was further stated that the Petitioner's accident could have had the effect of flaring up a previously inactive disease process, and that a severe blow to the chest can cause an active and rapid spread of tuberculosis from an inactive or latent source (R. 54, 57-58). Against this general background, specific and far more significant medical testimony was offered for the jury's consideration. Since that testimony is the crux of the Petitioner's argument, it will be presented therein to avoid seemingly needless repetition.

ARGUMENT

1. *The opinion of the federal appellate court is, per se, ample proof that the court demanded medical testimony which excluded every possible cause of Petitioner's condition other than his fall, in direct contravention of all law on the subject.*

It will be conceded, as stated in the Court of Appeals' majority opinion, that the Petitioner, in submitting the items of damage relating to tuberculosis, was required to prove that "the aggravation of his tubercular condition was probably caused by the incident on shipboard" (R. 108). Referring again to that opinion, the following will be found (R. 107-108):

"The appellee called as one of his witnesses, Dr. Seymour B. London, who had never examined the appellee. He testified, basing his opinion on the testimony of the other doctors given by deposition, that he thought the fall *probably* aggravated the appellee's condition. But he admitted that there were other factors which *might* have caused the aggravation of the tuberculosis and he had no way of telling which, and that it *might* have been any one or all of them". (emphasis supplied).

The foregoing quotation, in and of itself, shows that the appellate court did not apply the proper evidentiary test in determining whether or not the jury verdict and judgment could be reversed. Obviously that court decided that the testimony that Petitioner's fall *probably* aggravated his tubercular condition was not enough. *The court's opinion, and judgment, required that he prove that no other factor could possibly have had the same result.* Such an evidentiary burden is unheard of in a civil suit, and surpasses even the reasonable doubt requirement of criminal prosecution.

On at least three separate occasions Dr. London testified that the Petitioner's accident probably aggravated his tuberculosis:

(R. 42-43)

"Q. Based upon your having read these depositions of these treating Doctors, the deposition of Dr. Jacobs and Dr. LeDoux, do you have an opinion, based upon the information contained

therein, and the facts presented thereby, as to whether or not this man's fall aggravated his pre-existing latent tubercular condition?

"A. From the information that I was able to glean from the testimony, it would seem that after the fall he had a sudden worsening of his general feeling of well-being, and I would have to assume at this point that this was associated with the finding of the cavsterior region by x-ray approximately two weeks later at the time of the fall, and that these are not only related temporarily, but cause and effect. I would assume that this exposure, such as it was, to the inclement weather, and the trauma to the chest, *probably* played a role in making him feel worse at this time, and *probably* aggravated his condition."
(Emphasis supplied).

* * * *

(R. 86-87)

"Q. Doctor, as I understood your testimony here several minutes ago, you could not tell with any degree of reasonable medical probability whether this man's trouble was brought on acutely, as you say, by malnutrition, infection or trauma or blow. Isn't that still your testimony?

"A. Those were the various factors that could produce this type of condition.

"Q. I am asking you, isn't it your testimony that you cannot tell us which one of those was the

cause with any reasonable probability, knowing the background that the man had?

"A. I believe I have already testified that I thought that the trauma to the chest was the precipitating factor."

* * * *

(R. 88)

"Q. Restrict ourselves to what we know here. To what we know, what would you say are the three possibilities on this man? Would they be the three you already told us about?

"A. From the information I have gleaned from the testimony of the previous physicians that examined the patient and from the other information, I would feel that this man had an aggravation of his condition following this incident, whatever it was, that he injured his chest and that trauma produced an aggravation."

* * * *

It is respectfully submitted hereby that the jury properly could, and apparently did, believe the foregoing testimony and determine that the Petitioner's fall aggravated his tuberculosis. In *Tennant v. Peoria & P. U. Ry. Co.*, 321 U. S. 29, 35, 64 S.Ct. 409, 412, 88 L.Ed. 520, this Court held:

". . . The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. It is the jury.

> not the court, which is the fact-finding body. It weighs the contradictory evidence and inferences, judges the credibility of witnesses, receives expert instructions, and draws the ultimate conclusion as to the facts. The very essence of its function is to select from among conflicting inferences and conclusions that which it considers most reasonable (citation omitted). That conclusion, whether it relates to negligence, causation or any other factual matter cannot be ignored. Courts are not free to reweigh the evidence and set aside the jury verdict merely because the jury could have drawn different inferences or conclusions or because judges feel that other results are more reasonable."

It is implicit in the opinion under attack that the Court of Appeals chose to ignore the above-quoted and determined, by judicial fiat, that the jury *was not entitled to believe* Dr. London when he stated that the accident and the disease were causally related. The federal appellate court chose to usurp the jury's function and reweigh the credibility of the witness and or the weight of his testimony. Such action has not been, and should not be, condoned by this Court. *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500, 504, 77 S.Ct. 443, 447, 1 L.Ed.2d 493; *Webb v. Illinois Central Railroad Co.*, 352 U.S. 512, 515, 77 S.Ct. 451, 453, 1 L.Ed.2d 503.

It is not contended here that the jury could not properly have reached the same conclusion as the appellate court. However, the testimony above-quoted, standing alone, was sufficient basis for the jury's contrary decision. The federal appellate court's interference with the

jury verdict emasculated the fundamental right to jury trial guaranteed the Petitioner by the Jones Act, the Constitution of the United States, and the decisions of this Court.

2. *The federal appellate court ignored other medical testimony which supported the jury verdict.*

The majority opinion of the court below also considered the testimony of Dr. Jacobs, which was adduced at trial (R. 107). It is interesting to note that the Court of Appeals chose to consider only those portions of the doctor's testimony which were *unfavorable* to the jury verdict. Nowhere did the court mention Dr. Jacobs' testimony that traumatic aggravation of tuberculosis is demonstrable anywhere from a few days up to three months after injury, *and that the Petitioner's case history was in conformity with that time pattern* (R. 70-71). Dr. Jacobs also testified as follows:

(R. 79)

> "Q. You have stated that the blow of the chest and diabetes, in your opinion, in this case were both contributing causes to the activation or aggravation of the pre-existing, dormant condition, is that correct?
>
> "A. Yes, sir."

Obviously the appellate court either decided to ignore the above-quoted, or chose to disbelieve it, or determined that the Petitioner must prove that his fall was the *sole cause* of tubercular aggravation. Under the authorities, recovery is not limited to those instances where a given

injury is the sole cause of the resulting impairment. The wrongdoer must take the injured party as he finds him, and the concurrence of injury and disease does not defeat recovery for the consequent impairment. *Hern v. Moran Towing & Transportation Co., Inc., 2nd Cir., 138 F.2d 900, 902, Hiltz v. Atlantic Refining Co., 3rd Cir., 151 F.2d 159, 161.*

In its appraisal of the foregoing testimonial excerpt the Court's attention is also directed to a recent decision which held that under the Jones Act "the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought." *Ferguson v. Moore-McCormack Lines, 352 U.S. 521, 523, 77 S.Ct. 457, 458, 1 L.Ed.2d 511.*

3. *In view of the Petitioner's other undisputed injuries the appellate court had no right to reverse and enter judgment for the Respondent.*

Let us assume, arguendo, that the lower court was correct in holding that the Petitioner had failed to establish any causal connection between the accident and his tuberculosis. Even then the appellate court's entry of judgment for the Respondent, contrary to the jury's verdict, was improper.

The record affirmatively shows that counsel for the Respondent admitted at pre-trial conference that the Petitioner had sustained *some* injury as a result of the incident on shipboard (R. 6). Undisputed testimony established that the Petitioner sustained injuries totally unre-

lated to his chest. These included a blow to his head, shoulder, and ribs (R. 11), skin scratches on his left hip and leg (R. 94), and immersion in and inhalation of sea water (R. 93, 95).

The appellate court had no right to disregard even these minor, undisputed injuries and proceed to enter judgment against the Petitioner.

CONCLUSION

For the reasons advanced by all the foregoing, this Court is respectfully requested to reverse the judgment of the Circuit Court of Appeals for the Fifth Circuit and reinstate the jury verdict and judgment of the trial court.

Respectfully submitted,

MILTON KELNER and
JOHN K. LEWIS
Attorneys for Petitioner
25 West Flagler Street
Miami, Florida